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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/878,036	06/08/2001	Eyal Eliav	IR 6668-02	1623
23909	7590	05/21/2004	EXAMINER	
COLGATE-PALMOLIVE COMPANY			SPISICH, MARK	
909 RIVER ROAD			ART UNIT	PAPER NUMBER
PISCATAWAY, NJ 08855			1744	

DATE MAILED: 05/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/878,036

Applicant(s)

ELIAV ET AL.

Examiner

Mark Spisich

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 April 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Comment Regarding claims 12 and 21

It is suggested that "therefrom" (claim 1, line 17) be changed to – thereof – and that "bristle support carrier" (claim 21, line 14) be changed to – bristle carrier support --.

Claim Rejections - 35 USC § 112

1. Claims 1-23 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claims have been amended to include a recitation that the bristle carrier is "non-segmented". Such terminology was and is not in the specification of the present application and essentially amounts to claiming what the device is not as opposed to what it is. The prior art (Calabrese) happens to term the portions of the bristle carrier "segments" and applicant has merely added in the claims that the bristle carrier is "non-segmented". Applicant's own definition of this term is "a single, unitary work piece" and thus the bristle carrier of Calabrese is STILL non-segmented as defined by applicant. The "segments" of Calabrese are all integrally connected to one another by a living hinge (6). Whether or not the drawings of the presently application alone suggest a distinction over the device of Calabrese, the term chosen to recite this distinction fails to do so. As applicant has attempted to define over the prior art by introducing a term which was not defined by the application when it was filed, the true scope of the term is difficult to ascertain.

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2. Claims 1-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The addition of the term "non-segmented" renders the claims indefinite. One could have described the "fingers" of the present application as "segments" and thus the inclusion of the term "non-segmented" is indefinite.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-5,10,12-17,19 and 23 are rejected under 35 U.S.C. 102(e) as being anticipated by Calabrese (USP 6,510,575). The patent to Calabrese discloses a brush section (1) for use with a handle (H) having a conventional drive mechanism therein (see column 3, lines 26-28) and wherein the brush section includes a bristle carrier comprising a generally disk-shaped first portion which is oscillated about a central axis (5) (see column 3, lines 32-35) and wherein the bristles thereof are arranged in concentric rings (see fig 2a) and up to three (see fig 3a) fingers (which also bear bristles) extending therefrom in a direction distal from the first end of the brush section. The overall shaped of the bristle carrier (the first portion with the attached "fingers") defines a bristled face which has a shape other than circular or oval. The "segments" of the

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brush of Calabrese are formed integral with one another and thus collectively define "a single, unitary work piece" (which is "non-segmented" as defined by applicant). The shape shown in fig 2a can be said to be "generally egg-shaped" (claim 3) with the broadest reasonable interpretation thereof. In addition to the bristles of the "first portion" being in concentric rings, the bristles of the finger are arranged in row (claim 10) (again see fig 2). With regard to claim 12, the disclosed use of the brush of Calabrese would inherently involve some contact with the "gingival tissues". With regard to claim 17, the free ends of the finger is arcuate (see fig 2b). With regard to claim 23, the term "integral" is sufficiently broad to embrace constructions united by such means as fastening and welding. In re Hotte, 177 USPQ 326,328 (CCPA 1973).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Calabrese (USP 6,510,575). The patent to Calabrese discloses the invention substantially as claimed with the exception of specifying the particular radius of curvature (at least 1 mm), although the toe portion at the end of the finger is shown to be arcuate (see fig 2b). The particular radius of curvature would be obvious to one of ordinary skill depending on the desired thickness of the bristle carrier and the desired degree of bluntness.

5. Claims 11 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Calabrese (USP 6,150,575) as applied to claims 10 and 19 above, and further in view of Gruber et al (USP 6,308,358). The patent to Gruber discloses the invention substantially as claimed with the exception of the bristles of the finger being longer than those of the "first portion". The patent to Gruber discloses first disk portion (7) and a secondary bristle group (11) at the end of the brush wherein the bristles of the secondary group are longer than that of the first portion (see fig 2). It would have been obvious to one of ordinary skill to have modified the brush of Calabrese as such to better clean interdental spaces.

Comment Re Claims 6-9 and 21-22

The subject matter of these claims is not taught or suggested by the prior art. With regard to claim 21, the addition of the term "non-segmented" per se has (with regard to the prior art) been interpreted as required a single, unitary piece (as opposed to the distinct segments of Gruber).

Response to Arguments

6. Applicant's arguments filed 8 April 2004 have been fully considered but they are not persuasive. Applicant has attempted to define the present application over the prior art by introducing a term which does not have antecedent support in the specification and as such it is difficult to determine the exact scope of the added term. In fact, the definition provided by applicant for the term "non-segmented" (i.e. a single, unitary work piece) still reads on the bristle carrier of Calabrese (USP 6,510,575) in that even though the segments may move relative to each other, they are nonetheless integrally formed.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Spisich whose telephone number is (571) 272-1278. The examiner can normally be reached on M-Th (6-3:30), Alternate Fri off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J Warden can be reached on (571) 272-1281. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Mark Spisich
Primary Examiner
Art Unit 1744

MS